

1. Fernandez's testimony based upon his February 14, 2011 report that Defendants gave "allowances" for donning and doffing activities during paid time, because it is irrelevant and unreliable, and therefore inadmissible, under *Daubert* and *Kumho Tire*. Moreover, this testimony is inadmissible under Fed. R. Evid. 104(b) and 403 because it is: a) unsupported and b) fails to address the salient issue of whether Plaintiffs worked off-the-clock, which Fernandez admits he failed to analyze altogether;
2. Fernandez's testimony based upon his February 14, 2011 report concerning the "total time" it takes to perform any set of donning and doffing and related activities. This testimony is inadmissible under *Daubert* and *Kumho Tire* because it is based on a flawed methodology that intentionally omits critical information and is inadmissible under Fed. R. Evid. 403 because it would highly mislead the jury;
3. Fernandez's testimony based on information provided to him by "counsel and company" that does not result from independently conducted inspection or testing, including his opinions concerning "total allowances." This testimony is unreliable, unsupported, and constitutes mere speculation, and, therefore, is inadmissible under *Daubert* and *Kumho Tire*, as well as Fed. R. Evid. 104(b) and 403;
4. Fernandez's testimony based on Standard Sanitation Operating Procedure ("SSOP") documents, because it is irrelevant and unreliable, and is consequently inadmissible under *Daubert* and *Kumho Tire*, as well as Fed. R. Evid. 403; and
5. Fernandez's testimony based on late-produced documents and Fernandez's plant inspection that took place on February 2-3, 2011 without notice to Plaintiffs and after the close of discovery in this case, because it is untimely and prejudicial to Plaintiffs.

With respect to this last issue, Plaintiffs and the Class alternatively request the opportunity to have their own expert conduct a supplemental two-day plant inspection (as Fernandez did), so that the parties are on equal footing.

Plaintiffs respectfully request that the Court enter an Order setting an abbreviated briefing schedule on this motion and hear oral argument concerning this motion at the final pretrial conference scheduled for April 11, 2011 at 9:00am.

Plaintiffs do not request a continuance of the May 2, 2011 trial date.

Based upon the reasons set forth in the accompanying memorandum of law and supporting exhibits, Plaintiffs and the Class respectfully request that the Court grant this Motion and approve the accompanying proposed orders.

Dated: March 29, 2011

Respectfully submitted,

s/ Shanon J. Carson
Shanon J. Carson
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, Pennsylvania 19103
Tel: (215) 875-4656
Fax: (215) 875-4604
scarson@bm.net

Todd M. Schneider
Carolyn H. Cottrell
SCHNEIDER WALLACE
COTTRELL BRAYTON KONECKY LLP
180 Montgomery Street, Suite 2000
San Francisco, California 94104
Tel: (415) 421-7100
Fax: (415) 421-7105
ccottrell@schneiderwallace.com

Philip A. Downey, Esq.
The Downey Law Firm, LLC
P.O. Box 1021
Unionville, PA 19375
P: 610-324-2848
F: 610-813-4579.
downeyjustice@gmail.com

Christopher P. Welsh (State Bar No. 22279)
WELSH & WELSH, P.C., L.L.O.
9290 W Dodge Rd, Suite 100, The Mark
Omaha, NE 68114
Phone: 402-215-0619
Fax: (402) 384-8211
cwelsh@welsh-law.com

Attorneys for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record, including:

William M. Lamson, Jr., #12374
William R. Settles, #19879
Brian J. Brislen, #22226
LAMSON, DUGAN and MURRAY, LLP
10306 Regency Parkway Drive
Omaha, NE 68114-3743
Telephone: (402) 397-7300
Telefax: (402) 397-7824
wml@ldmlaw.com
wrs@ldmlaw.com
bjb@ldmlaw.com

s/ Shanon J. Carson
Shanon J. Carson
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, Pennsylvania 19103
Tel: (215) 875-4656
Fax: (215) 875-4604
scarson@bm.net